

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 338-E) for Approval of a Power Purchase Agreement under PUHCA Section 32(k) Between the Utility and a Wholly-Owned Subsidiary and for Authority to Recover the Costs of Such Power Purchase Agreement in Rates.

Application 03-07-032
(Filed July 21, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING SETTING PREHEARING
CONFERENCE FOR AUGUST 13, 2003, AND DENYING MOTION TO
SHORTEN TIME TO FILE PROTESTS**

Summary

This ruling sets a Prehearing Conference (PHC) for August 13, 2003, at 10:00 a.m., in the Commission's Courtroom in San Francisco and denies the motion filed by Southern California Edison Company (Edison) to shorten the protest period. In addition, Edison is directed to file supplemental testimony in advance of the PHC. Parties should be prepared at the PHC to address (1) the need for an expedited schedule; (2) consolidation of this application with Rulemaking (R.) 01-10-024; and (3) scheduling.

Background

On July 21, 2003, Edison filed an application for approval of a Power Purchase Agreement (PPA) between the utility and a wholly owned subsidiary and for authority to recover the costs of such PPA in rates. Edison proposes entering into a PPA with the Mountainview Power Company, LLC (MVL) for the

Mountainview Power Project (Mountainview) to acquire 1054 MW of additional generation capacity.

Edison states that it would first acquire MVL as a wholly-owned subsidiary, and then Edison will enable MVL to recommence full construction of Mountainview. To facilitate the purchase, Edison states that it has entered into an option agreement with the owner of MVL for the right to acquire MVL in its entirety, including existing entitlements and obligations. Under the option agreement, Edison receives a more favorable price if the acquisition of MVL is completed on or before November 30, 2003. Edison may increase the option period through February 29, 2004, but after November 30, 2003, both the purchase price and the option payments increase. The option expires on February 29. Because these dates do not comport with the Commission's usual schedule for the completion of an application, Edison requested that the Commission expedite the schedule and shorten the protest time.

The Independent Energy Producers Association (IEP) filed a response opposing the expedited schedule and simultaneously filed a motion to consolidate this application with R.01-10-024, the Generation Procurement Rulemaking (GPOIR).

By electronic mail, the Center for Energy Efficiency and Renewable Technologies (CEERT) asks that the protest period not be shortened. CEERT argues that the application presents numerous novel and complex legal and factual issues and parties need the 30-day protest time to identify and address the issues and applicable law.

Supplemental Testimony

Edison has requested that this application proceed on an expedited schedule on the ground that it has secured an option, for a limited period of time,

to acquire MVL and Mountainview at a favorable price and to avoid losing this opportunity altogether.

In summary, Edison is requesting an expedited schedule, including a shortened protest period, because the opportunity is “fleeting” and unique. These two points, that the opportunity is unique and fleeting, are threshold issues that require a sufficient showing before the Commission can justify expediting the schedule and reducing the amount of time parties have to respond to the application and prepare their own testimony.

Edison’s application, as filed on July 21, 2003, does not make a sufficient showing on the unique and fleeting issues. For example, Edison does not discuss why the competitive bidding process should not be utilized to show that the acquisition of Mountainview and MVL is a good plan and meets the criteria set forth in Pub. Util. Code § 454.5.

Edison is, therefore, directed to file and serve by electronic service, supplemental information, including testimony and supporting documentation, by close of business on Monday August 11, 2003. Parties are to be prepared at the Wednesday August 13, 2003 PHC, to debate whether Edison had made a sufficient showing on the issues that the opportunity with MVL and Mountainview is both unique and fleeting enough to support expediting the schedule.

Motion to Shorten Protest Period

Edison’s request for an order shortening the protest period is denied. The Commission is setting an expedited PHC for August 13, 2003 and at that time parties may discuss whether an expedited schedule for testimony and hearings is justified.

Motion To Consolidate

Rulemaking (R.) 01-10-024, referred to as the Generation Procurement Rulemaking (GPOIR), is an on-going proceeding to establish policies and cost recovery mechanisms for generation procurement and renewable resource development. Hearings are presently under-way in the rulemaking. IEP filed a motion to consolidate this application with the GPOIR on the grounds that both proceedings have a number of complex and interrelated factual and policy issues and involve many of the same parties.

The motion will not be ruled on at this time, but parties should be prepared to discuss consolidation at the PHC on August 13, 2003.

Prehearing Conference

A PHC is scheduled for Wednesday August 13, 2003, at 10:00 a.m. in the Commission Courtroom, State Office Building, located at 505 Van Ness Avenue, San Francisco, California. At this PHC the parties will be expected to discuss (1) whether Edison has met its obligation to make a sufficient showing of both the unique and fleeting nature of its agreement for MVL and Mountainview that an expedited schedule is justified; (2) should this application be consolidated with R.01-10-024; and (3) a schedule for this proceeding.

Service List

A service list will be established at the PHC. Until that time, all documents filed and/or served in this proceeding should be served on the service list used by Edison for the filing and service of the application AND on the service list for R.01-10-024.

Assignment of Proceeding

This proceeding is assigned to Commissioner Peevey and Administrative Law Judge (ALJ) Carol Brown. In order to expedite the initial PHC and have

preliminary motions addressed, the Commission is scheduling the PHC under ALJ Brown. This ruling provides notice of the assigned ALJ and triggers the time frame for automatic reassignment, pursuant to Rule 63(b).

Electronic Service

Rule 2.3(b) of the Commission's rules of Practice and Procedure¹ provides that the judge may direct that service be made by electronic means. By this ruling, I direct that all appearances that can provide the Commission with an electronic mail address are to serve and accept service of documents by electronic mail. Any appearance that has not provided an electronic mail address shall provide a fax number and/or a phone number, if available, so appearances without electronic mail may receive information in an expedited manner. Any appearance without electronic mail shall serve and take service by paper mail as described in Rule 2.3(a). This ruling does not change the rules regarding tendering of documents for filing, which must be done in paper form, as described in Rule 2, et seq.

As soon as a service list is established for this proceeding it will be available on the Commission's web page, www.cpuc.ca.gov. Choose "Service Lists," and scroll to the proceeding number, A.03-07-032. Parties are reminded to contact the Commission's Process Office to update address information when necessary so that the current service list is as up-to-date and accurate as possible. Parties are to serve President Peevey's Advisor Julie Fitch at JF2@cpuc.ca.gov and the assigned ALJ Carol Brown at CAB@cpuc.ca.gov.

¹ Commission Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

IT IS RULED that:

1. A Prehearing Conference (PHC) will be held on Wednesday, August 13, 2003, at 10:00 a.m. in the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California.
2. By close of business on August 11, 2003, Southern California Edison Company is to file and serve supplemental support for its position that the proceeding must proceed on an expedited basis because of the fleeting and unique nature of the option agreement with MVL and Mountainview.
3. At the August 13, 2003 PHC, parties are to be prepared to discuss (1) whether Edison has made a sufficient showing that the application should proceed on an expedited schedule; (2) whether this application should be consolidated with R.01-10-024; and (3) a schedule for this proceeding.
4. Electronic mail service protocols are established as set forth above.
5. Parties are to use the service list initially used by Edison to serve the application and the service list for R.01-10-024 until a service list is established for this proceeding following the PHC.
6. This ruling provides notice of the assigned ALJ and triggers the time frame for automatic reassignment, pursuant to Rule 63(b).
7. Edison's request to shorten the protest period is denied.

Dated July 31, 2003, at San Francisco, California.

/s/ ANGELA K. MINKIN

Angela K. Minkin
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Setting Prehearing Conference for August 13, 2003, and Denying Motion to Shorten Time to File Protests on all parties of record in this proceeding or their attorneys of record.

Dated July 31, 2003, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

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(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.